

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA * CRIMINAL NO. H-09-259-1
*
VERSUS * Houston, Texas
* September 24, 2010
DONALD SCHROEDER * 10:38 a.m.

SENTENCING
BEFORE THE HONORABLE EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

For the United States:

Mr. James D. McAlister
Assistant U.S. Attorney
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For the Defendant:

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Court Reporter:

Fred Warner
Official Court Reporter
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1 THE COURT: Court calls for sentencing No. 09-259,
2 United States versus Donald Schroeder.

3 For the United States.

4 MR. McALISTER: Jim McAlister for the United States,
5 Your Honor.

6 THE COURT: For the defendant.

7 MR. WOODS: Good morning, Your Honor. Ron Woods for
8 Don Schroeder.

9 THE COURT: Good morning, sir.

10 The defendant in this case was convicted, was
11 he not, of Count 1 of the superseding information?

12 MR. McALISTER: That is correct, Your Honor.

13 THE COURT: Based upon a plea of guilty?

14 MR. WOODS: Yes, Your Honor. May 29th last year of
15 '09.

16 THE COURT: And have you received and read and had
17 opportunity for your client to read, discuss with you the
18 presentence investigation report from the probation office?

19 MR. WOODS: Yes, Your Honor, and the addendum.

20 THE COURT: Very well.

21 I have received in connection with this the
22 presentence investigation report from the probation office,
23 the government's objections at Document No. 127, the next
24 statement from the government at Document 140 that it had no
25 objections after the probation office agreed to the

1 defendant's, or rather, to the government's objection, which
2 was in accord with what the defendant would object to as
3 well.

4 The government's 5 -- and that was at 140.
5 Then the government's 5K1.1 motion, Document No. 141.

6 The defendant's sentencing memorandum at
7 Document No. 144 that I infer has no objections to the PSR,
8 and numerous well-written letters from a large number of
9 former business colleagues, friends and others that have
10 spoken of the good qualities they have observed in Mr.
11 Schroeder.

12 Are these all of the matters that have been
13 filed in connection with this sentencing?

14 MR. WOODS: Yes, Your Honor.

15 MR. McALISTER: By the government, Your Honor, yes.

16 THE COURT: Let me say, counsel, with respect to
17 this presentence investigation report, I have given
18 considerable study to this question that the government
19 objected to at Document No. 127, namely, the adjustment of
20 two levels under Section 2B1.14.

21 I'm not -- although the probation office
22 evidently was persuaded, after reading the authorities and
23 cases on this, I am not persuaded that that is not a correct
24 adjustment that should have been made in this case; that is,
25 the adjustment that if the offense involves receiving stolen

1 property, the defendant or the person in the business of
2 receiving and selling property increased by two levels. A
3 number of cases the 5th Circuit has decided on this. I will
4 hear you if you wish to speak further on this.

5 MR. McALISTER: I would like you to, Your Honor.

6 Your Honor, this is a complicated case. It's a
7 little bit unusual in the case because the product that's
8 actually being moved around is not like dope or guns where
9 it's detrimental to an individual. This product is actually
10 readily sold in the U.S. and Mexico, though the
11 across-the-border transaction at this particular time in
12 history were prohibited. In that vein, we have numerous
13 companies in the U.S. that were dealing in legitimate
14 petroleum sales, such as Mr. Schroeder's company Trammo, for
15 years.

16 THE COURT: I recognize that. That is not an issue.

17 MR. McALISTER: Well, but in the overall conspiracy,
18 there were many companies that were really in the business of
19 doing nothing else but buying and selling condensate. So in
20 our conspiracy itself, there is a vast difference between the
21 entities. And it wouldn't really be fair to sentence one
22 company that's in legitimate business in the same enhancement
23 as with the companies that really dealt in nothing else but
24 this. And I know the case law differs on it, but from
25 the government's --

1 THE COURT: The 5th Circuit is pretty consistent on
2 it, I think.

3 MR. McALISTER: From the government's perspective,
4 there was a difference in this case. Really the enhancement
5 in my opinion went more towards a fence. Did you set this
6 company up to do the selling of this product in the U.S.?
7 Trammo was not in that vein. Some of the companies at the
8 border certainly were. That's really what they were doing.

9 Certainly Continental Fuels in this instance
10 was set up in the past to do legitimate trades; but at this
11 point in history, that's really all they were doing was
12 dealing with the condensate. And that's why I thought they
13 deserved the enhancement, yet Trammo did not. That was the
14 distinction I drew and the reason that I objected to that in
15 this particular case, because I don't think it would be
16 equitable to treat all the companies the same because they
17 weren't similarly situated.

18 MR. WOODS: Your Honor.

19 THE COURT: Yes, sir.

20 MR. WOODS: May it please the Court. I submitted a
21 detailed memorandum to the probation office contesting that
22 two-point enhancement. The sentencing guidelines state that
23 the two-point enhancement applies to those people that are in
24 the business of receiving and selling stolen property.

25 Mr. Schroeder was President of Trammo

1 Petroleum, which had \$248 million worth of legitimate
2 business, and he made the horrible mistake of buying and
3 receiving this particular small amount, which was less than
4 one percent. It's .8 percent of his business during that
5 period of time. He clearly was not in the business of
6 receiving and selling stolen property.

7 He made one mistake in his 35 years in the
8 energy business. And the fraud provision in the guidelines
9 adequately covered the offense without enhancing it two
10 levels because of the receiving and selling. That's already
11 covered in the guidelines in 2F.

12 The two-point enhancement is for those people
13 who are clearly like fences and those type of individuals
14 that are in the business of receiving and selling. Mr.
15 Schroeder was not in the business of doing that. He was in a
16 legitimate business, a very sizable business of \$248 million
17 in the year 2008, so I clearly felt that it didn't apply.

18 I informally submitted a lengthy memo to the
19 probation department. I should have filed it with the Court
20 if I thought that the Court was going to take this exception
21 to it, and I am happy to refile it. I don't have it present
22 with me, but I am happy to get a copy and give it to the
23 Court for the Court's consideration if you're thinking of not
24 allowing this two-point reduction.

25 THE COURT: Well, there's \$248 million of business;

1 but the amount that is being delivered in a rather
2 sophisticated way to put this into commerce in this country
3 through Trammo was more than \$2 million in business.

4 MR. WOODS: Not during that period of time of the
5 conspiracy, Your Honor.

6 THE COURT: What was it?

7 MR. WOODS: January to April, '09 it was only 2
8 million and a profit of 148,000.

9 THE COURT: 2 million in the volume --

10 MR. WOODS: Yes, Your Honor.

11 THE COURT: -- of the stolen condensate?

12 MR. WOODS: Yes. That Trammo was involved with.
13 That Mr. Schroeder was involved with.

14 THE COURT: So there was a 7 percent profit, if I
15 read it correctly?

16 MR. WOODS: Yes, Your Honor.

17 THE COURT: During this period of time, whereas it
18 was only less than one percent of the volume of the business?

19 MR. WOODS: Yes, Your Honor.

20 THE COURT: It was a very profitable thing to fence
21 this --

22 MR. WOODS: For that short period where he made the
23 mistake, it was a profitable venture. He did not enter into
24 it because he wanted that to be his main level of business.
25 He had a significant level of business, and this was a

1 horrible mistake that didn't need to be entered into, but was
2 not done out of greed or out of trying to make this his main
3 line of business.

4 THE COURT: All right. Anything else?

5 MR. WOODS: May I submit that memorandum to you?

6 THE COURT: Well, this is the time I am going to
7 rule. So I have read everything that's been submitted.

8 I've read the cases on this, United States
9 versus Escubet, 919 Fed 2d, 960; United States versus McKay,
10 33 Fed 3d, 489, where there was one backhoe was all that was
11 involved. And yet the adjustment was upheld.

12 United States versus Sutton, 77, Fed 3d, 91,
13 all 5th Circuit cases.

14 The 5th Circuit consistently has viewed this as
15 something that is an adjustment that is to be made. Even
16 though it's only one exception to an otherwise legitimate
17 business, here we have a few months of exception, millions of
18 dollars of business, more involved than in any of these 5th
19 Circuit cases, and a profit margin far in excess of what he
20 could do on his normal business. And under these
21 circumstances, I find that the adjustment does apply and that
22 it meets all of the requirements of the enhancement.

23 And as explained in the Application Note 5,
24 with respect to certainly the sophistication of this
25 operation, the value and size of the stolen property that was

1 being through-put here through this case, which was sizable,
2 even though small in proportion to the overall business,
3 creates a huge incentive to others who were stealing this
4 product in Mexico when they know there is a market and you
5 can get it into commerce in the United States.

6 And that is the kind of activity, therefore,
7 conducted through Trammo that encourages and facilitates
8 others to commit crimes. And in this instances there is no
9 previous history of that criminal activity; but on balance, I
10 find that these factors certainly require the adjustment to
11 be made. And I am going to make that adjustment and overrule
12 the objections made by both the government and the defendant
13 with respect to that.

14 Otherwise, I adopt the Presentence
15 Investigation Report, the addendum thereto and find based
16 upon that the Total Offense Level is 17, the Criminal History
17 Category is 1. Let me make sure about that because this
18 may -- there may be a larger -- it would be 18, so he'd get,
19 still gets a three-level credit for adjustment of
20 responsibility.

21 That would bring this to an Offense Level 15,
22 Criminal History Category 1; and that would give a
23 recommended custody range of 18 to 24 months, a fine range of
24 4,000 to \$40,000. And there is a Section 5K1.1 motion from
25 the government for downward departure pending.

1 Very well. Mr. Woods, do you wish to make a
2 statement?

3 MR. WOODS: Yes, Your Honor.

4 THE COURT: You may.

5 MR. WOODS: We're asking the Court to seriously
6 consider and grant the government's motion of a downward
7 departure of five levels. Mr. Schroeder made a horrible
8 mistake after 35 years in the legitimate energy business. He
9 is very well respected in the business.

10 The minute he was confronted with the
11 investigation, he made the decision to plead guilty, to
12 cooperate fully with the government. He was fully debriefed
13 by the U.S. Attorney's office, by the agents from Immigration
14 and Customs Enforcement. His immediate plea and cooperation
15 led to the government being able obtain pleas from the other
16 individuals.

17 Mr. Schroeder has tried to rectify and atone
18 for his mistake. He has cooperated fully with Trammo, and
19 you received a letter from Trammo recommending leniency based
20 on his cooperation. He has cooperated fully with Pemex, the
21 alleged victim in this case; and they have recommended
22 leniency for this Court to consider.

23 Mr. Schroeder is so respected in the energy
24 industry that all his clients followed him from Trammo --
25 excuse me -- from Enron over to Trammo and have been with

1 him; and even though they realized and have read in the
2 newspaper about this mistake, they have written this Court
3 numerous letters and well thought-out and thoughtful letters
4 recommending leniency for this Court.

5 I have been doing this for 46 years, and this
6 is the most remorseful defendant I have ever seen, Your
7 Honor. He realized he made a mistake. He wants to try and
8 atone for it.

9 I don't think that a term of imprisonment is
10 deserved in this case. He has led an exemplary life. And
11 we're asking the Court to please, please consider probation.

12 THE COURT: Very well. Thank you, sir.

13 Mr. Schroeder, do you wish to make a statement
14 on your own behalf, sir?

15 THE DEFENDANT: Yes, sir.

16 I mean, since I pleaded guilty a
17 year-and-a-half ago, there hasn't been a day that I haven't
18 been remorseful through this whole ordeal. You know, I was
19 brought up one of six kids, the oldest one, you know; always
20 had to set an example for my brothers and sisters.

21 I come from a pretty strict Catholic family;
22 and, you know, I try to do that and lead them graduating
23 through high school, working through college, graduating from
24 college. And I just tried to set an example for them through
25 this.

1 I've always tried to be above-board, which I
2 think I have been, Your Honor. And, you know, I just, I'm
3 asking for forgiveness and a second chance to get back out in
4 society.

5 I know I've disappointed my family, my kids,
6 grand kids. And I'd just like to get back out in society,
7 and whatever time I do have left on this Earth try to make
8 amends for what I have done.

9 THE COURT: Thank you, sir.

10 Mr. McAlister, do you wish to make a statement?

11 MR. McALISTER: I do, Your Honor.

12 I did file a motion in this case. I'd like for
13 the Court to consider the information that I placed in that
14 motion.

15 I'd also like the Court to note that at the
16 initiation of this investigation, I met with Mr. Schroeder
17 and his attorneys; and he stepped up to the plate
18 immediately. There was no delay. It was within the same
19 week. And he never lied to me one time. His cooperation
20 helped with the prosecutions in the United States and helped
21 with the prosecutions in Mexico.

22 It's very important for the Court to note, most
23 of the defendants in this case did step up and help me.
24 Absolutely none of the defendants, and especially Mr.
25 Schroeder, was responsible for the theft. They didn't even

1 know the people responsible for the theft. We had to work
2 our way backwards to get that information. It was very
3 helpful on the Mexican side. The part they played with the
4 sale on this side of the border was very far removed from any
5 of the incidents of theft.

6 The product being sold -- and I know this is
7 not a forgiveness -- but is not of the same quality as
8 somebody selling guns or drugs in the United States.
9 Certainly we would be jumping up and down and asking for
10 prison time in a case like that.

11 Also of significance in this case, to the best
12 of my examination of the records, this man didn't receive a
13 penny. All the money that he took in went to his company,
14 and I can't tell that he made one penny off of any of these
15 transactions. It all went to the company.

16 His stepping forward, the company then agreed
17 to pay restitution to Mexico. So of the money that was taken
18 for this case has all been paid back, based on this
19 conspiracy that the United States put together. And he has
20 also agreed to work with them on paying back the fine money
21 that the company had to pay.

22 I don't know what more a guy could do at that
23 point in time. I have never really encountered a situation
24 where somebody stepped forward that quick and actually turned
25 around and made amends.

1 So I am asking from probation from the Court
2 based on my motion.

3 THE COURT: All right. Thank you, sir.

4 MR. McALISTER: May I add one thing, Your Honor?

5 THE COURT: Yes, sir.

6 MR. McALISTER: I believe at a Level 10 in Zone B
7 the Court would go to 5C1.1, and that as a alternative to
8 confinement under the guidelines, the Court could offer home
9 confinement indeed in the guideline range. So I would like
10 to amend my statement to ask for probation with home
11 confinement as a condition to satisfy any term of
12 imprisonment.

13 THE COURT: All right. Thank you, sir.

14 Well, would the government object if I made a
15 downward departure two levels more than you are recommending?

16 MR. McALISTER: Absolutely not, Your Honor. As a
17 matter of fact, we would agree with the Court on that. As I
18 have indicated, he's done everything we have asked.

19 THE COURT: All right. I will state the sentence
20 the Court intends to impose. I will give final opportunity
21 for any legal objections, if there are any, before it is
22 finally imposed.

23 I have considered the advisory guidelines; I
24 have also considered the Section 5K1.1 motion, the
25 submissions of the government's counsel and the defense

1 counsel. I find that the Section 5K1.1 motion is well
2 supported, and I'll therefore grant that motion and make a
3 downward departure from the guidelines and sentence within
4 the range of Offense Level 8, Criminal History Category 1.

5 Pursuant to the -- I will state the sentence I
6 am going to impose. As I say, I will give opportunity for
7 any legal objections, if there are any, before it is finally
8 imposed.

9 Pursuant to the Sentencing Reform Act of 1984,
10 it's the judgment of the Court that the defendant Donald
11 Schroeder is hereby placed on a term of probation for a
12 period of three years.

13 Special conditions while on probation. The
14 defendant shall not commit another federal, state or local
15 crime, comply with the standard conditions that have been
16 adopted by this Court under General Order No. H1996-10, abide
17 by any mandatory conditions required by law and shall comply
18 with following additional conditions:

19 The defendant shall not possess a firearm,
20 ammunition, destructive device or any other dangerous weapon.
21 The defendant shall cooperate in the collection of a DNA
22 sample from the defendant if collections of such sample is
23 authorized pursuant to Section 3 of the DNA Analysis Backlog
24 Elimination Act of 2000.

25 The defendant is required to provide the

1 probation officer access to any requested financial
2 information. A fine or restitution amount has been imposed.
3 The defendant is prohibited from incurring new credit charges
4 or opening additional lines of credit without approval of the
5 probation officer.

6 It is further ordered that the defendant as
7 additional -- it is further ordered that the defendant shall
8 pay the United States a special assessment of \$100. It's
9 further ordered that the defendant shall pay the United
10 States a fine in the amount of \$10,000.

11 Having assessed the defendant's ability to pay,
12 payment of the total criminal monetary penalties shall be due
13 as follows: The defendant shall make a lump sum payment of
14 \$100 due immediately. The remaining balance of criminal
15 monetary penalties, the remaining \$10,000 fine shall be paid
16 within 30 days after the date of this judgment. Payment
17 shall be made through the United States District Clerk,
18 Southern District of Texas.

19 Is there any legal reason why the sentence
20 should not be imposed as stated?

21 MR. McALISTER: No, Your Honor.

22 MR. WOODS: No, Your Honor.

23 THE COURT: Then pursuant to the Sentencing Reform
24 Act of 1984, it's the judgment of the Court that the sentence
25 as stated is imposed upon defendant Donald Schroeder.

1 Mr. Schroeder, you have a right to appeal this
2 matter. If you cannot afford a lawyer to represent you on
3 appeal and can satisfy the Court that you meet the criteria
4 for the appointment of counsel, I will appoint a lawyer for
5 you.

6 Mr. Woods will advise you of your appeal
7 rights, I am sure; and I will give to you this written notice
8 of your appeal rights that you may take with you. A copy of
9 that will be retained in the Court file.

10 Let me say that you have certainly had a lot of
11 splendid support from business colleagues, letters and so
12 forth over a long period of time. Of course, you've had a
13 very outstanding counsel representing you during this period
14 of time.

15 I was satisfied to make a larger departure than
16 had been recommended at that point because I was persuaded
17 that probably home detention is not going to be really
18 required in your case. I had that confidence in you from
19 everything I've heard and expecting your future to go just as
20 everyone has indicated and as you have told me it will.

21 Is there anything further in this matter?

22 MR. McALISTER: No, Your Honor.

23 MR. WOODS: No, Your Honor.

24 THE COURT: Very well. That concludes this hearing.
25 Thank you.

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MR. WOODS: Thank you, Your Honor.

THE DEFENDANT: Thank you.

(Conclusion of Sentencing)

CERTI FI CAT I ON

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 18 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable EWING WERLEIN, JR., United States District Judge, on the 24th day of September, 2010.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 1st day of October, A.D., 2010.

Fred Warner, CSR
Official Court Reporter